IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 347 of 2000

Date of Decision : 22.11.2007

Gurpal Singh …Appellant.

Versus:

Sarita & another …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes*

For the appellant: Mr. Bimal Gupta, Advocate.

For the respondents : Mr. S. S. Mittal, Sr. Advocate with Mr. Surinder Sharma, Advocate.

Sanjay Karol, J. (Oral).

The present appeal arises out of the judgment dated 13.8.1999 passed by the Addl. Chief Judicial Magistrate, Court No.1, Paonta Sahib, District Sirmaur, H.P. in Cr. Complaint No. 89/3 of 1997, titled as Gurpal Singh v. Sarita & another.

The appellant's complaint, filed u/s 138 of the Indian Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') was dismissed on the ground that the firm, on whose behalf the cheque in question was issued by the accused persons

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

favouring the complainant, was not arrayed as a party to the complaint.

The appellant filed a complaint alleging that a cheque amounting to Rs.72,290/- issued by the respondents/ accused persons, on presentation was dishonoured with the remarks "Exceeds arrangements". Inspite of legal notice dated 6.2.1997 having been served upon them, the cheque amount was not cleared by them. The trial Court dismissed the complaint, inter alia on the ground that the firm on whose behalf the cheque was issued by the accused was not impleaded as party to the complaint. It held that the firm was required to be impleaded as party as required u/s 141 of the Act.

However, in ***Anil Hada*** v. ***Indian Acrylic Ltd***. (2000(1) SCC 1) & ***R. Rajagopal*** v. ***S. S. Venkat*** *(*2001(10) SCC 91), the Apex Court has held that complaint without impleading a firm as a party under the Negotiable Instruments Act is clearly maintainable and in ***T. Stanes & Co. Ltd***. v. ***A. Jaffarullah*** *(*2001(10) SCC 78), it has held as under:-

> "It has been rightly pointed out that the said question is covered by the decision rendered by this Court in *Anil Hada v. Indian Acrylic Ltd.* Explaining Section 141 of the Act, this Court observed that 3 categories of persons can be brought within the purview of the penal liability through the legal fiction envisaged in the section. They are: (1) the company which committed the offence, (2) everyone who was in charge of and was responsible for the business of the company, and (3) any other person who is a Director or a Manager

> or a Secretary of the company, with whose connivance or due to whose neglect the company has committed the offence. The Court further specifically held that if the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. The provisions do not contain a condition that prosecution of the company is a *sine qua non* for prosecution of other persons who fall within the second and the third categories mentioned therein. The Court held that even if the company is not prosecuted for one or the other reason, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act."

In this view of the matter, the judgment of the trial Court needs to be set aside and without touching the merits of the matter, the matter is remanded back to the trial Court for decision afresh on merits.

The parties through their learned counsel are directed to appear before the concerned Magistrate on **26.12.2007.** The requisitioned record be returned back henceforth.

(Sanjay Karol),
Judge.

November 22, 2007
(rana)